

Advisory Opinion

IECDB AO 2006-12

September 20, 2006

David Boyd
State Court Administrator
Iowa Judicial Branch Building
1111 East Court Avenue
Des Moines, Iowa 50319

Dear Mr. Boyd:

This opinion is in response to your letter of September 13, 2006, requesting an opinion from the Iowa Ethics and Campaign Disclosure Board pursuant to Iowa Code section 68B.32A(11) and Board rule 351—1.2. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

FACTUAL STATEMENT:

The Iowa Judicial Branch wants to use public resources to produce and distribute a brochure discussing the role of the judiciary, the rule of law, the history and purpose of retention elections, judicial accountability, judicial decision making, qualities that make a good judge, and information about the judges standing for retention. This would include biographies of judges standing for retention this year. The Judicial Branch wants to ensure that this information does not violate the prohibition on the use of public resources for political purposes.

QUESTION:

Does the proposed voter guide or the posting of judicial biographies violate the prohibition on the use of public resources for political purposes?

OPINION:

The Board first notes that judicial retention elections are subject to the state campaign finance laws in Iowa Code chapter 68A.¹ Iowa Code section 68A.505 and the Board's administrative rules in 351—Chapter 5 discuss the ability of public resources to be used for political purposes.

In determining whether public resources may be used to produce and distribute the brochure in question or to post biographical information on the judicial branch Web site, the Board has to decide whether or not the brochure and biographies contain “express advocacy” as defined in Iowa Code section 68A.102(14) and administrative rule 351—4.53(1).

These definitions of “express advocacy” are based on the court case *Iowa Right to Life Committee v. Williams*, 187 F.3rd 963 (8th Cir. 1999) that defined “express advocacy” as the use of words or symbols such as “vote for,” “elect,” “defeat,” or “support” that exhorted the particular outcome of an election of a clearly identified candidate or ballot issue.

In reviewing the brochure, the Board does not believe that it contains words or symbols of “express advocacy.” Rather, the brochure gives information and does not exhort a particular outcome of a judicial retention election.² While the brochure does make general positive statements about the judicial branch, a voter may determine that a particular judge does not meet these standards. Providing biographies of judges, by itself, does not advocate for retention. A voter may choose to vote to retain or not retain a judge based on the judge’s background.

Therefore, the brochure may be produced and distributed, and biographical information may be posted on the judicial branch Web site, without violating the prohibition on the use of public resources for political purposes as set out in Iowa Code section 68A.505 and the Board’s rules in 351—Chapter 5.

BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair
Janet Carl, Vice Chair
Gerald Sullivan
Betsy Roe
John Walsh
Patricia Harper

Submitted by: W. Charles Smithson, Board Legal Counsel

¹See IECDB Advisory Opinion No. 2004-03 for further discussion of the application of Chapter 68A and the Board’s role in administering the campaign laws to judicial retention elections in Iowa.

²For purposes of this opinion, “judicial retention election” includes all positions named in Iowa Code section 46.20 that includes a “judge of the supreme court, court of appeals, or district court including district associate judges, full-time associate juvenile judges, or full-time associate probate judges, or a clerk of district court who is required to stand for retention under section 602.1216.”